

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LORRAINE NETHERTON,	)	
	)	CASE NO. C13-1281-JCC-MAT
Petitioner,	)	
	)	
v.	)	ORDER RE: PETITIONER'S
	)	"FIRST MOTIONS"
JANE PARNELL,	)	
	)	
Respondent.	)	
_____	)	

Petitioner submitted a document entitled "First Motions." (Dkt. 28.) Now, having considered that submission, as well as the response from respondent (Dkt. 32) and petitioner's reply (Dkt. 33), the Court does hereby find and ORDER as follows:

(1) Petitioner's request to have the state court record electronically filed in the Court's electronic filing system – CM/ECF – is DENIED. Respondent properly, and in accordance with the longstanding practice of this Court, submitted the state court record in paper form. The Court finds no basis for departing from its standard practice in this case.

(2) Petitioner requests that respondent be directed to file additional documents or, in

01 the alternative, that the record be expanded to include such documents. As related to the  
02 Report of Proceedings and Personal Restraint Petition Exhibits A-U (“PRP exhibits”) and as  
03 conceded by petitioner, this request is now moot given the filing of these documents, by  
04 respondent and petitioner respectively. (*See* Dkts. 28 & 29.)<sup>1</sup> However, petitioner failed to  
05 comply with federal and local civil rules in submitting the PRP exhibits, as well as additional  
06 exhibits attached to her reply, without redaction of personal data identifiers, such as names of  
07 minor children and dates of birth. *See* Fed. R. Civ. P. 5.2 and LCR 5.2. As such, the Court  
08 herein directs the Clerk to STRIKE the unredacted exhibits (*see* exhibits attached to Dkts. 28 &  
09 33), and directs petitioner to REFILE the exhibits for inclusion in the record in a properly  
10 redacted form.<sup>2</sup>

11 Petitioner also seeks the expansion of the record to include the Clerk’s Papers on  
12 Petitioner’s Appeal (“clerk’s papers”) and the trial exhibits. The Court, however, finds no  
13 basis for granting this request. First, respondent is not required to provide such documents.  
14 *See* Rule 5(d) of the Rules Governing Section 2254 Cases (requiring filing of state court briefs,  
15 opinions, and dispositive orders). Second, it appears neither party to this matter possesses or  
16 has current access to those documents. (*See* Dkt. 32 at 5 and Dkt. 33 at 2.) Third, petitioner  
17 fails to identify any basis for the filing or consideration of any particular clerk’s papers or trial  
18 exhibits in this habeas matter. Petitioner, at most, asserts that the “relevance and need for

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20 1 Respondent, in her Answer and Submission of Relevant State Court Record, noted that  
21 exhibits were missing from the record she received from the state court and stated she did not object to  
the submission of such exhibits by petitioner’s counsel with the traverse. (Dkt. 11 at 9, n.2 and Dkt. 12  
at 2, n.1.)

22 2 Petitioner should also take care to correct any other errors in the submission of these  
exhibits. As respondent observes, it appears that petitioner failed to submit PRP exhibit G and  
submitted duplicate copies of exhibits H and J.

01 further expansion of the record to include these documents should be among the subjects  
02 addressed in the further briefing on the procedural issues and the merits[.]” (Dkt. 33 at 2.) In  
03 the absence of some more specific showing, the Court finds no justification for an expansion of  
04 the record to include any clerk’s papers or trial exhibits not already provided as a part of the  
05 state court record. For this reason, and for the reasons stated above, petitioner’s request for an  
06 order requiring respondent to file additional documents or to otherwise expand the record  
07 beyond documents already filed, or anticipated to be refiled as directed above, is DENIED.

08 (3) Petitioner asks that the Court review all portions of the record referenced in the  
09 petition, the Answer, and related motions and memoranda. However, the Court finds no ruling  
10 necessary in relation to this request. As respondent observes, the Court considers the entire  
11 state court record filed in considering a petitioner’s habeas claims. Accordingly, so long as all  
12 documents filed by the parties were part of the state court record, they will necessarily be  
13 considered.

14 (4) Petitioner requests a ruling that the state courts did not adjudicate her  
15 constitutional claims on the merits and, therefore, that there is no state decision to which  
16 deference is due under 28 U.S.C. § 2254(d). She maintains that, pursuant to her interpretation  
17 of a state rule of procedure addressing the consideration of personal restraint petitions, the state  
18 court failed to consider her claims on the merits by allowing for their consideration by the  
19 Acting Chief Judge of the Washington Court of Appeals, rather than referring the claims to a  
20 panel of judges. *See* Wash. RAP 16.11(b) (“If the issues presented are frivolous, the Chief  
21 Judge will dismiss the petition. If the petition is not frivolous and can be determined solely on  
22 the record, the Chief Judge will refer the petition to a panel of judges for determination on the

01 merits. If the petition cannot be determined solely on the record, the Chief Judge will transfer  
02 the petition to a superior court for a determination on the merits or for a reference hearing.”)  
03 The Court finds the request for a ruling premature and a final determination properly included  
04 in the Report and Recommendation addressing petitioner’s habeas claims.<sup>3</sup> However,  
05 petitioner is advised that the Court’s preliminary review of this argument compels the  
06 conclusion that it lacks merit.

07 Habeas relief may not be granted with respect to any claim “adjudicated on the merits in  
08 State court proceedings” unless the State court decision was unreasonable. 28 U.S.C. §  
09 2254(d). The phrase “adjudicated on the merits” does not require any particular kind of  
10 hearing at the state court level. *See Lambert v. Blodgett*, 393 F.3d 943, 965-69 (9th Cir. 2004).  
11 Rather, “a state has ‘adjudicated’ a petitioner’s constitutional claim ‘on the merits’ for purposes  
12 of § 2254(d) when it has decided the petitioner’s right to post conviction relief on the basis of  
13 the substance of the constitutional claim advanced, rather than denying the claim on the basis of  
14 a procedural or other rule precluding state court review of the merits.” *Id.* at 969.  
15 Moreover, “[w]hen a federal claim has been presented to a state court and the state court has  
16 denied relief, it may be presumed that the state court adjudicated the claim on the merits in the  
17 absence of any indication or state-law procedural principles to the contrary.” *Harrington v.*

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18 <sup>3</sup> Petitioner also suggests it is unclear by what authority the undersigned would issue a Report  
19 and Recommendation in this matter, asserting a lack of an order of reference pursuant to 28 U.S.C. § 636  
20 or MJR 4. However, by General Order of this Court, all prisoner cases, except those filed under 28  
21 U.S.C. § 2255, are assigned upon filing to both a U.S. District Judge and a U.S. Magistrate Judge, and  
22 “deemed referred pursuant to 28 U.S.C. § 636.” Amended General Order 03-12 at 2-3 (issued  
September 12, 2012) (also stating: “The designated magistrate judge will handle non-dispositive  
matters, and submit a Report & Recommendation on dispositive matters.”) The Court further observes  
that the case cited by petitioner in support of this contention is plainly inapposite. *See Allen v. Meyer*,  
No. 11-16714, 2014 U.S. App. LEXIS 11639 at \*2-6 (9th Cir. Jun. 20, 2014) (finding final judgment  
issued by magistrate judge in a civil rights proceeding invalid given the failure to obtain the consent of  
both parties to proceed before a magistrate judge).

01 *Richter*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 770, 784-85 (2011) (also stating: “The presumption may  
02 be overcome when there is reason to think some other explanation for the state court’s decision  
03 is more likely.”) (internal and other cited sources omitted). An adjudication on the merits is  
04 presumed even where the state court issues a summary denial “unaccompanied by an opinion  
05 explaining the reasons relief has been denied[.]” *id.*, or where “the state court addresses some of  
06 the claims raised by a defendant but not a claim that is later raised in a federal habeas  
07 proceeding[.]” *Johnson v. Williams*, \_\_\_ U.S. \_\_\_, 133 S. Ct. 1088, 1096 (2013).

08 Here, the fifteen-page decision of the Acting Chief Judge addresses petitioner’s claims  
09 on the merits. (Dkt. 12, Ex. 32.) There is no indication the denial of relief rested on  
10 procedural grounds, or any consideration other than the merits of the claims presented.  
11 Petitioner fails to identify any support for a contention that the mere fact that the merits review  
12 resulted in a conclusion that the claims were frivolous, or the fact that the analysis was  
13 conducted by the Acting Chief Judge, rather than a panel of judges, somehow nullifies the  
14 merits analysis for purposes of habeas review. Petitioner should, therefore, anticipate this  
15 Court’s review of her claims pursuant to § 2254(d).

16 (5) Petitioner’s request for further briefing on the need for discovery, an evidentiary  
17 hearing, or further record expansion is DENIED as premature. However, petitioner’s request  
18 for further briefing on the merits of her claims is GRANTED. It appears that, given  
19 petitioner’s belief that the deferential standard set forth in § 2254(d) should not be applied to  
20 her claims, she failed to respond to respondent’s Answer with consideration of that standard.  
21 (See Dkt. 27.) As such, the Court finds it prudent to provide petitioner with an opportunity to  
22 submit a supplemental traverse responsive to the arguments set forth in the Answer.

01 Respondent's Answer is herein RENOTED for consideration on **August 22, 2014**. Petitioner  
02 may file and serve a supplemental response no later than **August 18, 2014**, and respondent may  
03 file and serve a reply no later **August 22, 2014**.

04 (6) The Clerk shall send a copy of this Order to the parties and to the Honorable  
05 John C. Coughenour.

06 DATED this 28th day of July, 2014.

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09 Mary Alice Theiler  
10 Chief United States Magistrate Judge  
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